



Neutral Citation Number: [2025] EWCA Civ 824

Case No: CA-2025-000080

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**MRS JUSTICE LIEVEN**  
**ZW22C50103**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 1 July 2025

**Before :**

**THE LADY CARR OF WALTON-ON-THE-HILL**  
**LADY CHIEF JUSTICE OF ENGLAND AND WALES**  
**LADY JUSTICE KING**  
and  
**LORD JUSTICE WARBY**

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**Between :**

**“X” and “Y”**  
**(By their litigation friend, the Children’s Guardian)** **Appellants**  
**- and -**  
**(1)The British Broadcasting Corporation**  
**(2) A local authority**  
**(3) “Z”** **Respondents**

**“In re HMP”**  
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**Joy Brereton KC and Jemimah Hendrick (instructed by Dawson Cornwell LLP) for the**  
**Appellant**  
**Chris Barnes (instructed by the British Broadcasting Corporation) for the 1<sup>st</sup> Respondent**  
**George Paterson (instructed by the 2<sup>nd</sup> Respondent’s Legal Service) for the 2<sup>nd</sup> Respondent**  
**George Lafazanides (instructed by Machins Solicitors) for the 3<sup>rd</sup> Respondent**

Hearing date : 1 July 2025  
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**APPROVED JUDGMENT**

## Lady Carr CJ, Lady Justice King and Lord Justice Warby:

### Introduction

1. This appeal is about access to the court file under the principle of open justice as identified in *Dring (on behalf of the Asbestos Victims Support Groups Forum UK) v Cape Intermediate Holdings Ltd (Media Lawyers Association intervening)* [2019] UKSC 38; [2020] AC 629 (“*Dring*”). The purpose of this short judgment is to address a matter of general importance, namely to emphasise the limits of the open justice principle, specifically in the context of care proceedings under the Children Act 1989 (“the CA”).
2. Open justice is a fundamental constitutional principle. The underlying rationale is the need to allow the media and the public access to information about the work done in courts and tribunals so that not only individual decisions but also the operation of the courts and tribunals more generally can be subjected to appropriate scrutiny. Allowing such scrutiny serves the public interest by keeping a check on the way in which judges behave, enabling the public to understand how cases are decided, and ensuring public confidence in the system of public justice. To serve these ends, procedural rules, in particular CPR Part 5.4C and FPR r.12.73 PD12G, make provision for non-party access to court documents or communications between the court and a party or another person. The open justice principle may also require that media or public access be given to a wider range of documents than those prescribed by the rules (unless prohibited by the rules).
3. The appeal is brought against an order made in the Family Division of the High Court on 20 January 2025 following care proceedings under the CA concerning two children (“the proceedings”) (“the Order”). The Order granted an application by the BBC for: (i) access to documents in the proceedings; and (ii) the partial variation of the reporting restrictions imposed by section 12 of the Administration of Justice Act 1960 so as to permit reporting of specified kinds of information drawn from those documents. The Order was made on the basis that the open justice principles as identified in *Dring* applied, that the issues into which the BBC was looking were matters of public interest and that, conducting the familiar balancing process identified in *In Re S (A Child) (Identification: restrictions on Publication)* [2004] UKHL 47; [2005] 1 AC 593, the rights of the media and the public to freedom of expression outweighed the privacy rights of the children.
4. The appeal is brought by the guardian of the children, acting as their litigation friend. There are in substance three grounds of appeal, namely (i) that the application was not made for any purpose connected with the open justice principle; accordingly *Dring* was not engaged and there was no balancing process to conduct (“ground 1”); alternatively, (ii) that the balancing process which the judge (Lieven J) undertook was flawed because it gave undue weight to the fact that certain information relating to the children was already in the public domain (“ground 2”) and (iii) that the judge placed insufficient weight on the rights of the children (“ground 3”).
5. The appeal is supported by the individual in whose care the children have been placed by the court (“the second carer”). The local authority also supports the appeal.

6. The appeal was originally resisted by the BBC. The BBC has, however, now consented to an order that the appeal be allowed and that the judge's order be set aside on ground 3. The BBC has stated its position as follows :

“The decision to offer to agree to the setting aside of Lieven J's order by consent has been reached following careful consideration of our duty of care under the BBC's Editorial Guidelines in relation to the two children. The Guidelines require us to take due care over the physical and emotional welfare and the dignity of under-18s who are involved in our editorial content and, having considered the submissions (and particularly those of [the second carer]), it is our view that that maintaining our opposition to the appeal would cause them undue harm.”

7. We agree that the appeal must be allowed, but on a basis different to that advanced by the BBC. Fundamentally and importantly, the appeal must succeed on the open justice ground, ground 1.
8. In summary, whilst the issues which the BBC wished to investigate are matters of legitimate public interest, those issues arise separately and distinctly from the issues that arose in the proceedings. The purposes behind the BBC's application were not connected with the open justice principle, and the application should not have been entertained under the auspices of that principle.

### **The facts**

9. We have used generic terms to refer to the parties other than the BBC because that is necessary to ensure that the appeal is not rendered futile by disclosure of the very kind that is in issue. For that reason, there is in place a reporting restriction order. For the same reason, the account of the background must be in broad and general terms.
10. The background, in brief, is this. In late 2021, the children's mother arranged for them to be looked after by someone whom we will call “the first carer” under an arrangement which all parties agree was as a matter of law, a "private fostering arrangement" within the meaning of section 66 of the CA. After about four months, the first carer gave the local authority notice that she could no longer look after the children, whom she left at school with their belongings.
11. The local authority promptly initiated care proceedings in the family court. On 1 April 2022, an interim care order was made. The threshold criteria did not rely on the time spent by the children with the first carer. Shortly afterwards, the children were placed with the second carer. The care proceedings came to an end in August 2023 when an order was made confirming the placement of the children with the second carer under the supervision of a different local authority.
12. Events in 2022 and 2023, in which the children were not involved, prompted two respected BBC journalists to take an interest in the way in which the children had been cared for by the first carer and the role of the local authority in respect of those arrangements.

## **The application**

13. On 4 October 2024 the journalists, or the BBC on their behalves, applied to the Family Court for: (i) access to various documents relating to the care proceedings; and (ii) permission to report the contents of those documents subject to certain limitations and restrictions which were designed to protect, as far as possible, the interests and rights of the children. At this stage, the BBC knew little about the proceedings and the involvement of the local authority in the lives of the children. The BBC believed, and the basis of its application was, that the children had been placed by the local authority with the first carer following an assessment by the local authority. The purpose of the application as then stated was to understand how the children came to be placed with the first carer by the local authority, as part of the BBC's role as watchdog generally, and specifically in relation to the operation of the family courts.
14. The application was transferred to the Family Division of the High Court and came before the judge. The full hearing was fixed for 6 December 2024.
15. By this stage, the BBC had learned of the true factual position: the decision to place the children with the first carer had been one taken by the mother privately and without the local authority's involvement. It was a private fostering arrangement which had ended prior to the proceedings commencing.
16. Upon appreciating these matters, the BBC had amended its application and shifted the grounds on which the application was based, focussing now on reporting on private fostering arrangements generally, and the monitoring of the same.
17. In its skeleton argument in support of the amended application, the BBC put its case as follows (at paragraph 24):

### **“Focus of the application**

The BBC makes clear that its central focus is on investigating, with a view to reporting on: (i) the circumstances in which the children came to be cared for by [the first carer] for a period of some four months; (ii) the degree to which the local authority fulfilled its fundamental safeguarding role; and (iii) understanding the children's experiences in [the first carer's] care. It is that clear focus that forms the basis of its amended application.”

The judge heard argument from counsel on behalf of the BBC, the local authority, the second carer and the guardian. On 15 January 2025 she gave a reserved judgment by which she upheld the application and made the Order.

## **The judgment below**

18. The judge's reasoning may be summarised as follows:
  - (i) To resolve the application the court had to apply a balance between the Article 8 rights of the children and the second carer, and possibly other third parties, and the Article 10 rights of the press to report. The outcome would depend upon a detailed

scrutiny of the rights engaged with what the judge called "close regard" to the rights of the children.

- (ii) Although the disclosure sought would amount to an interference with the children's privacy rights, it would not add a great deal to what the BBC already knew and was free to publish in any event. Granting the BBC access to further information and the freedom to report upon it would not add materially to the harm that the children would suffer.
  - (iii) There was also a real public interest in, as the judge put it "Reporting on this case and the circumstances which led to the children being in [the first carer's] care," and certain other issues including "interagency working and school oversight of children."
  - (iv) To grant the orders sought would serve the interests of transparency in what she referred to as "the Family Justice System" and in accordance with the principles identified in *Dring*.
  - (v) In these circumstances, the Article 8/10 balance tilted, "quite clearly in favour of allowing reporting".
19. As will be apparent, a critical factor in the judge's decision was the weight to be placed on the public interest in transparency and certain specific issues. The key features of her reasoning on that topic were as follows:

"17. It should be noted that all parties in the present case agree that the Media Reporting Transparency Pilot, which is presently underway in the Family Courts, does not bear directly on the issue in this case. The Pilot concerns reporting of ongoing Family Court cases rather than applications such as this for disclosure of documents in cases that have been concluded, and which have not come within the Pilot. However, the principles espoused by the PFD in the Transparency Review, and referred to in the caselaw set out above, about the need for greater transparency in the Family Court system in order to support public confidence, are of relevance.

...

51. On the other side of the Article 8/10 balance, I accept that there is a real public interest in reporting on this case and the circumstances which led to the children being in AS's care. Firstly, as the PFD has made clear, there is a strong public interest in better public knowledge and understanding about the working of the Family Justice System and therefore of the courts and local authorities working within it. This entirely accords with *Dring* at [43] and the public interest in understanding how the Family Justice System generally works. Secondly, this case raises a little known issue within the CA, that of private fostering arrangements and the local authorities' duties of oversight over such arrangements. These provisions very rarely come before the

Court and I accept are rarely considered. Private fostering arrangements are not subject to court oversight and thus the media necessarily has a greater role in casting any public light on the question of whether the statutory scheme is effective or not.

52. There are also a number of other issues raised in the case, such as inter-agency working and school oversight of children, which are highly topical. Thirdly, the Learning Review and the LA's statement make clear that there have been serious failures by the LA and a lack of coordinated information-sharing between various state agencies. This is a depressingly familiar scenario which there is a real public interest in the media reporting on and generating a wider public discussion. As I have said above, it is not the statutory purpose of s.12 AJA to be used to prevent local authorities being made publicly accountable.

54. .... There is a danger in cases such as this in the refusal of permission to disclose documents generating more and less well informed public interest than if the Family Justice System is open and shows that there is nothing to hide.”

## **Discussion**

20. As confirmed by the Supreme Court in *Dring*:

“41. The constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state. It follows that, unless inconsistent with statute or the rules of court, all courts and tribunals have an inherent jurisdiction to determine what that principle requires in terms of access to documents or other information placed before the court or tribunal in question. The extent of any access permitted by the court's rules is not determinative (save to the extent that they may contain a valid prohibition). It is not correct to talk in terms of limits to the court's jurisdiction when what is in fact in question is how that jurisdiction should be exercised in the particular case.

42. The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases - to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly. In *A v British Broadcasting Corpn*, Lord Reed reminded us of the comment of Lord Shaw of Dunfermline, in *Scott v Scott* [1913] AC 417, 475, that the two Acts of the Scottish Parliament passed in 1693 requiring that both civil and criminal cases be heard “with open doors”, “bore testimony to a determination to secure civil liberties against the judges as well as against the Crown” (para 24).

43. But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases. In the olden days, as has often been said, the general practice was that all the argument and the evidence was placed before the court orally. Documents would be read out. The modern practice is quite different. Much more of the argument and evidence is reduced into writing before the hearing takes place. Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material."

21. The court in *Dring* thus identified two main purposes of the open justice principle, namely: (i) to enable public scrutiny of the way in which the courts decide cases so as to provide public accountability and secure public confidence; and (ii) to enable public understanding of the justice system. Whilst the court recognised that its identification of these purposes might not be exhaustive, the core aim is to ensure appropriate transparency for the work of the courts and tribunals and the judges who sit in them.
22. As is apparent from decisions such as *Newman v Southampton City Council* [2021] EWCA Civ 437; [2021] 1 WLR 2900 (at [48] and [49]), it is important to understand and respect the limits of the open justice principle in this context. Court files may contain a great deal of information that is commercially sensitive or confidential or (as in this case) personal and private. The open justice principle does not extend to affording third parties access to such information for reasons unconnected with examining the work of the courts and tribunals and the judges who sit in them.
23. The Supreme Court in *Dring* made clear that a non-party has no right of access to the court file; the court's permission is required. It is incumbent on the person seeking access to documents under the open justice principle to explain (i) why he seeks access and (ii) "how granting him access would advance the open justice principle": see [45].
24. In this case, the BBC's amended explanation explained why it wanted access to the file but said nothing about how this would advance open justice. The limits that we have identified were overlooked, and the judge's approach to the application of the open justice principle was wrong in law. The objective of the BBC, whilst undoubtedly part of a legitimate journalistic investigation, was neither to scrutinise the way in which courts decide cases, nor to enable the public to understand how the justice system works and decisions are made. It was not in any way designed to throw light on the workings of the family courts and their judges.
25. The central error into which the judge fell was to define the (family) justice system as encompassing not only the work of the courts but also (independently of the courts) the operations of local authorities and other state agencies working with children, and then to apply the principles identified in *Dring* to the entire (family) justice system as so defined.
26. That is not what *Dring* is about. The application of open justice principles is confined to the system of justice in the narrow sense. Disclosure for one of the purposes

identified in *Dring* may incidentally facilitate scrutiny of decision-making by local authorities and other public bodies. But enabling such scrutiny is not itself a purpose which requires or justifies disclosure under the open justice principle.

27. Each case will of course turn on its own facts, and there may be cases where the manner in which a local authority has discharged its safeguarding functions is subject to examination in care proceedings. Disclosure under the open justice principle may then be justified. But, as set out above, that is not this case.
28. Nor was it correct to state (at least by the time of the hearing in December 2024) that the BBC wanted to report on the proceedings themselves: the proceedings were not relevant to the issues which the BBC wished to investigate and report on. On the BBC's own account its application was focused on matters other than those that had been addressed in the proceedings. As Ms Brereton KC put it, the BBC wished to monitor the effectiveness of private fostering arrangements.
29. Our conclusion on ground 1 is sufficient to dispose of the appeal, and makes it unnecessary for us to consider grounds 2 and 3.

## **Conclusion**

30. The BBC was not unreasonable in making its initial application in the context of care proceedings at a time when it believed that the private fostering arrangement had been sanctioned by the local authority. Once it became clear that the local authority was not involved until after that arrangement had come to an end, and that the courts had had no involvement at any stage of the arrangement, the application should have been withdrawn. Access to information about the underlying events, if to be pursued, would have to be sought by alternative routes, such as potentially an application under the Freedom of Information Act 2000.
31. The principles of transparency and open justice are there to allow the workings of the justice system to be understood and examined as appropriate. Nothing in this judgment is intended to undermine the importance of those principles or to hinder or discourage the welcome progress that is being made in the application of those principles across all jurisdictions, including in the family courts. The role of journalists in reporting on care cases is clearly in the public interest. However, care proceedings cannot be regarded as an available source of material for journalistic endeavour that has nothing to do with the aims of the open justice principle.
32. For these reasons, and on this basis, we allow the appeal.